

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Emmanuel G. Kaidanov

DEFENDANTS

Pennsylvania State University
David Joyner
Julie Del Giorno

(b) County of Residence of First Listed Plaintiff Centre County
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE:

IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

Alvin F. de Levie, Esquire
2 Penn Center, Suite 1850
Philadelphia, PA 19102
215-351-1100

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. Section 1983

Brief description of cause:

Wrongful Termination

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ 3,000,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

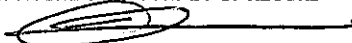
JUDGE

DOCKET NUMBER

DATE

6/4/14

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

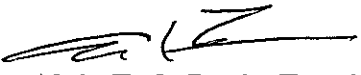
CASE MANAGEMENT TRACK DESIGNATION FORM

Emmanuil G. Kaidanov	:	CIVIL ACTION
v.	:	
Pennsylvania State University	:	
David Joyner	:	NO.
Julie Del Giorno	:	

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

<u>6/7/14</u> Date	 Alvin F. de Levie, Esquire Attorney-at-law	Plaintiff Emmanuil G. Kaidanov Attorney for
<u>215-351-1100</u> Telephone	<u>215-567-1998</u> FAX Number	<u>afdesq@verizon.net</u> E-Mail Address

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 1370 Penfield Road, State College, PA 16801

Address of Defendant: 4601 Market Street, Philadelphia, PA 19139; 201 Old Main, University Park, PA 16802; 101 Jordan Center, University Park, PA 16802; 333 James M. Elliott Building, University Park, PA 16802

Place of Accident, Incident or Transaction: Commonwealth of Pennsylvania

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: Judge Date Terminated:

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☒ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases
(Please specify)

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases
(Please specify)

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Alvin F. de Levie

, counsel of record do hereby certify:

- ☒ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☒ Relief other than monetary damages is sought.

DATE: 6/4/14

Attorney-at-Law

23245
Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 6/4/14

Attorney-at-Law

23245
Attorney I.D.#

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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

EMMANUIL G. KAIDANOV

Plaintiff,

v.

PENNSYLVANIA STATE UNIVERSITY
201 Old Main
University Park, Pennsylvania 16802

and

DAVID JOYNER
101 Jordan Center
University Park, Pennsylvania 16802

and

JULIE DEL GIORNO
333 James M. Elliott Building
University Park, Pennsylvania 16802

Defendants.

JURY TRIAL DEMANDED

CASE NO.:

COMPLAINT

Plaintiff, Emmanuil G. Kaidanov, by and through his undersigned counsel, Alvin F. de Levie, Esquire, files this Complaint against the above-captioned Defendants, and as grounds in support thereof, alleges the following:

JURISDICTION

1. This civil rights action is brought pursuant to 42 U.S.C. §1983.
2. Jurisdiction is based upon 28 U.S.C. §1331 and §1343(a)(1), (3) and (4).
3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (d) because Defendant Pennsylvania State University maintains several places of business and regularly

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conducts business within the Eastern District of Pennsylvania. Defendant's places of business within this district are located at: 4601 Market Street, Philadelphia, PA 19139; 1600 Woodland Road, Abington, PA 19001; 25 Yearsley Mill Road, Media, PA 19063; 30 East Swedesford Road, Malvern, PA 19355; 2809 Saucon Valley Road, Center Valley, PA 18034, Tulpehocken Road, Reading, PA 19610. Penn State in a multi-faceted marketing campaign has stated that it "lives here" in Philadelphia.

PARTIES

4. Plaintiff Emmanuil G. Kaidanov (hereinafter "Plaintiff" or "Coach Kaidanov") is an adult male individual who at all times relevant hereto has resided in State College, Centre County, Pennsylvania.

5. At all times relevant hereto, Plaintiff was employed by Defendant Pennsylvania State University (hereinafter "Penn State" or "Penn State University") as head coach of both the men's and women's fencing teams, and at all relevant times was under contract with Penn State in that capacity.

6. As head coach over a period of 31 years, the Plaintiff led the men's and women's Penn State fencing teams to 12 National Championships, 9 second-place finishes, and 25 top three finishes. Coach Kaidanov was honored 4 times as the NCAA Coach of the Year, and his student-athletes have won 28 individual national titles. Coach Kaidanov produced 188 All American All-American fencers, 10 Olympians, and the first and only United States World Champion. Coach Kaidanov coached the United States fencing team at the World Championships, the World University Games, the Pan American Junior Championships and the World Under-Twenty Championships. In addition, Coach Kaidanov has served as the United States Fencing Association's National Training Director.

7. Defendant Penn State University is a public/quasi-public, state government

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related educational institution, duly organized and existing under the laws of the Commonwealth of Pennsylvania, with a principal place of business at 201 Old Main, University Park, Pennsylvania 16802.¹

8. Defendant David M. Joyner (hereinafter "Joyner") is an adult citizen of the United States and at all times relevant hereto was a resident of the Commonwealth of Pennsylvania.

9. At all times relevant hereto, Defendant Joyner was the Director of Athletics at Penn State University, and in that capacity, undertook the actions described herein while the agent, servant and employee of Penn State University. Defendant Joyner was at all relevant times acting under color of state law. Both in his official and individual capacities, Defendant Joyner was responsible for fairly and equitably establishing, maintaining and enforcing the customs, practices and policies of the Penn State University Athletics Department, subject to and consistent with applicable state and federal law. He is being sued in both his official and individual capacities.

10. Defendant Julie Del Giorno (hereinafter "Del Giorno") is an adult citizen of the United States, and at all times relevant hereto, was a resident of the Commonwealth of Pennsylvania.

11. At all times relevant hereto, Defendant Del Giorno was employed by Defendant Penn State University, and held the title "Athletics Integrity Officer". In that capacity, she undertook the actions described herein both individually and as the agent, servant and employee of Defendant Penn State University. As the agent, servant and employee of Defendant Penn State University, Del Giorno was at all times relevant hereto acting under

¹ See, Penn State – public or private? (Penn State's official statement regarding their public status.) http://www.psu.edu/ufs/about_senate/committees/univ-gov/tg_may_2012_publicvsprivate_final.pdf

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color of state law. Both in her official and individual capacities, Defendant Del Giorno was responsible for the fair and equitable development, implementation and oversight of policies and practices within the Department of Intercollegiate Athletics that were supposed to ensure compliance with certain foundational documents, and ethical conduct, subject to and consistent with applicable state and federal law. Defendant Del Giorno was not Coach Kaidanov's supervisor and at no time had the authority or ability to terminate Coach Kaidanov's employment.

12. Defendant Del Giorno's position was created as part of Penn State's attempt to fulfill the requirements of the Athletics Integrity Agreement entered into by Penn State in August of 2012 with the NCAA and the Big Ten Conference. At all times relevant hereto, Defendant Del Giorno was responsible for fairly and equitably overseeing Penn State's compliance with its obligations of integrity, civility, ethics and institutional control, subject to Penn State's own policies and applicable law. Defendant Del Giorno is being sued in both her official and individual capacities.

13. At all times relevant hereto, Defendants Joyner and Del Giorno, along with Dovizia Long and Susan McGarry-Basso, were acting as the agents, servants and employees of Defendant Penn State University, and were acting both individually and within the course and scope of their agency and employment.

FACTS

14. Plaintiff hereby adopts and incorporates by reference any and all facts previously stated, as if fully set forth herein.

15. In September of 1982, Coach Kaidanov was hired by Penn State as the coach of the men's fencing team. The Plaintiff entered into a contract at that time with Defendant Penn State. Thereafter, the Plaintiff's contract was renewed annually, without exception or

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qualification, creating a reasonable and non-unilateral expectation of continued employment. See Annual Renewal Letters attached hereto as Exhibit "A".

16. Prior to the events and circumstances set forth herein, Coach Kaidanov's employment contract was most recently renewed on July 1, 2013, approximately five months after an incident in February of 2013 involving a student-athlete for whom Plaintiff was responsible as head coach, which incident is described herein, and which incident became the pretext for the Plaintiff's unjust and wrongful termination in August of 2013.

17. As a contractual employee of Defendant Penn State University, Coach Kaidanov had a cognizable property interest in his continued employment sufficient to trigger the procedural due process requirements of the Fourteenth Amendment to the United States Constitution. Notwithstanding the foregoing, Coach Kaidanov was mid-contract with Penn State at the time of his wrongful discharge, not an at-will employee, and could not be terminated without a good-faith showing of just cause, good-faith enforcement of all applicable University policies consistent with law, and a pre-termination *Laudermill* hearing.²

THE INCIDENT INVOLVING A FALSE ACCUSATION AGAINST A STUDENT-ATHLETE ON THE WOMEN'S FENCING TEAM- FEBRUARY 2013

18. In February of 2013, a female student-athlete to be referred to herein as "Ms. Doe" was a Penn State varsity student-athlete, and a member of the women's fencing team coached by the Plaintiff. As such, Ms. Doe's well-being, and her compliance with University policies and applicable law, were subject to the Plaintiff's oversight, and were his responsibility as a head coach.

19. In February of 2013, Ms. Doe was unexpectedly called to the Penn State

² Staff members dismissed during the terms of their contracts have interests in continued employment that are safeguarded by due process. *Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 576-77, 92 S. Ct. 2701, 2709, 33 L. Ed. 2d 548 (1972).

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University Police Department and was advised that she had been accused of the possession of drugs, an accusation which was later proved false. A member of the Athletics Department staff thought she saw "Ms. Doe" drop a piece of rolled up white athletic tape, which the staff member erroneously concluded, without a scintilla of evidence or investigation was a "joint". At no time had Ms. Doe used or possessed drugs. Without first addressing Ms. Doe or Coach Kaidanov regarding this erroneous assumption, the staff member falsely reported Ms. Doe for drug possession, thereby subjecting her to possible criminal sanctions, loss of her position as a member of the women's fencing team, and potential irreparable damage to her future prospects for education and employment.

20. Penn State police officers "cleared" Ms. Doe of the accused drug possession. Coach Kaidanov recognized the severity of the situation and took immediate and appropriate action in response. Coach Kaidanov promptly addressed the matter with Ms. Doe and her parents. At Coach Kaidanov's direction, Ms. Doe voluntarily agreed to take a drug test. The negative result of this test further confirmed that the accusations against her were false. Coach Kaidanov has received the unqualified support of Ms. Doe, her parents, and from members of the Penn State University men's and woman's fencing team since his termination.

21. In order to comply with his duties and obligations as a head coach, Coach Kaidanov was required to monitor, oversee, inquire and investigate his team's compliance with the "Athletics Integrity Agreement" (hereinafter "the AIA") and other relevant standards and obligations, and was responsible under the AIA to represent his team's compliance with these standards, including the NCAA Constitution and Bylaws and the Big Ten Handbook. This duty included an obligation to investigate and report suspected violations of the NCAA's rules, the Big Ten's rules, the Athletics Department's own policies and procedures, or other conduct that has a reasonable risk of undermining the University's commitment to principles

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of civility, integrity and ethical conduct in its Athletics Department. NCAA Bylaw 11.1.2.1 required Coach Kaidinov, as head coach of the fencing program to investigate and make personal inquiries of all relevant staff regarding the incident involving Ms. Doe.

22. In addition to investigating potential wrongdoing by one of his student athletes, the aforementioned obligations broadly encompassed the duty to inquire into allegations made falsely by any other staff member of the Athletics Department, since such behavior similarly threatens the University's commitment to principles of civility, integrity and ethical conduct in its Athletics Department.

23. In addition to the AIA, the Plaintiff was subject to obligations imposed upon him by the Pennsylvania State University Code of Conduct for Intercollegiate Athletics (hereinafter the "Code of Conduct"). The Plaintiff was a "covered person" under said Code, as were "all coaches and all managers of any of the University's NCAA-sanctioned Division I intercollegiate athletics teams; all University staff and other University and Athletics Department employees who are directly involved with any of the University's NCAA-sanctioned intercollegiate athletics teams... and all members of the Athletics Director's Executive Committee." For purposes of construing these duties, an individual is considered "directly involved" with such a team if such individual "assists with any such team's activities and has a reasonable likelihood of recurring personal interaction with both varsity student-athletes and coaches resulting from his or her employment responsibilities."

24. Pursuant to the Code of Conduct, all covered persons, including the Plaintiff and members of the Athletics Department staff, were required to comply with all University policies and procedures, the ICA Policy Manual, applicable NCAA and Big Ten standards, and with all applicable laws, rules and regulations. Furthermore, the Code of Conduct required Coach Kaidanov to report "any suspected violation(s) of the University's or the Athletics

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Department's policies, or other conduct that materially undermines the University's and the Athletics Department's commitment to principles of civility, integrity and ethical conduct in the Athletics Department, particularly when engaged in by other "covered persons". At the very least, compliance with these obligations requires good faith inquiry and investigation by each "covered person" before further action is taken.

25. According to the ICA Policy Manual, with which compliance is mandated by the aforesaid Code of Conduct, certain "Rights and Responsibilities" are enumerated as to Coaches and Staff. Specifically, the ICA Policy Manual provides as follows:

"Coaches/Staff also have other important responsibilities in a number of areas. They have the responsibility to provide the public with a quality program and to represent the Athletics Department, the University, and the Commonwealth of Pennsylvania in a manner that will enhance and promote confidence in the Penn State athletic program. ***Coaches/Staff have the responsibility to take a sincere interest in both the academic and athletic activities of all student-athletes and to ensure that each individual is treated with fairness and provided with the optimal opportunity to excel.*** They have the responsibility to operate all programs and activities within the NCAA Constitution and Bylaws, the Big Ten Handbook, and the policies and procedures of the University and the Department, including this ICA Policy Manual and the Penn State Code of Conduct for Intercollegiate Athletics." (Emphasis added)

26. In addition to the cited obligation to protect his student-athletes, the ICA Policy Manual imposed the following additional affirmative obligations upon coaches and staff members, including Coach Kaidanov:

Coaches shall, in the event a student-athlete has violated the NCAA Constitution and/or Bylaws, the Big Ten Handbook, and/or the applicable University or Athletics Department policy or procedure, immediately report any such violation to the appropriate University and/or Athletics Department personnel...

Coaches shall immediately report to the Athletics Director or his designee any significant disciplinary sanction imposed on a

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student-athlete, including but not limited to dismissal from the team...

Coaches shall immediately report to the Athletics Director or his designee any significant incident or any other incident that may reflect upon the reputation and/or interests of the University and/or Athletics Department. A coach or Staff member found in violation of the above rules.... shall be subject to disciplinary or corrective action... including, but not limited to, termination of employment....

27. As any perceived or alleged failure to undertake the aforesaid responsibilities and duties by Coach Kaidanov could cost him his career, reputation and future employment, he was strictly compelled by the Defendant, Penn State University, to remain fully informed and apprised of all matters bearing on the well-being of his student-athletes, all matters potentially constituting a violation of any applicable standards or rules, significant disciplinary actions taken as to his student-athletes, and any significant incident which may reflect negatively upon the fencing team, the University, and the Athletics Department. It is indisputable that accusations of illegal drug use and/or possession by one of Coach Kaidanov's student-athletes qualifies in all of the categories cited above, and that just as he was compelled to report, he was equally compelled to investigate any matter so qualifying.

28. Once the risk of further damage to Ms. Doe's reputation and future prospects caused by the false accusation of criminal wrongdoing had been curtailed, Coach Kaidanov engaged in further inquiry as to the circumstances of the false accusation, in order to ascertain how it had occurred, why he had not been advised by the informant in light of his direct duties and responsibilities to investigate and report such matters, and to determine whether any further steps were necessary to resolve this matter to the benefit of Ms. Doe and the fencing team, the Athletics Department, and the University.

29. In the course of the inquiry necessary to meet his responsibilities, Coach

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Kaidanov spoke to the Athletics Department staff member who had made the false report regarding Ms. Doe and expressed his disappointment that the staff member had not informed him of what had happened.³ Coach Kaidanov initiated no further conversations and Coach Kaidanov took no further actions.

30. During the aforesaid conversation between Coach Kaidanov and the staff member who had falsely reported Ms. Doe for drug possession, Coach Kaidanov expressed no intention to take any further action regarding the staff member, threatened no adverse employment action against her, and undertook no adverse actions against her. Indeed, notwithstanding the lack of intention on the part of Coach Kaidanov to take any further action regarding the staff member, Coach Kaidanov's professional relationship to the staffer who had made the false report precluded even the possibility of any sort of hypothetical adverse action. Coach Kaidanov did not have the power to terminate the staffer, he could not and did not affect the staffer's prospects for promotion, he did not have the authority to affect her compensation, he had no control over the terms and conditions of her employment, he made no negative evaluations, he made no negative references, and he made no threats. Coach Kaidanov took no action at all which was adverse to the staffer's employment.

31. At no time did Coach Kaidanov engage in any activity that could be deemed legally or factually to constitute "retaliation", nor by definition was he ever in a position to do so as either an employer or person legally recognized as having the potential to take adverse employment action against the staff person who falsely and/or erroneously accused Ms. Doe.

32. To the knowledge of Coach Kaidanov, the staff member to whom he spoke has neither personally claimed of nor offered any evidence of retaliation or other adverse

³ Coach Kaidanov subsequently learned that the staff member made the false report anonymously when he was informed by Defendant Del Giorgio during their July, 2013 meeting. When Coach Kaidanov spoke to the Athletics Department staff member he was unaware that the report had been made anonymously.

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employment action.

33. The actions taken by Coach Kaidanov, in the good faith exercise of the obligations and duties imposed upon him by Penn State and the NCAA to ensure the well being of the student-athletes, the fencing team, the Athletics Department and the University as aforesaid, are themselves protected actions. Indeed, the Code of Conduct expressly provides as follows:

Non-Retaliation and Confidentiality

The University and the Athletics Department maintain a strict non-retaliation and non-retribution policy for anyone, including but not limited to *any Covered Person, who takes action that he/she reasonably believed to be necessary to uphold or enforce compliance with this Code of Conduct, the ICA Policy Manual, the University's obligations under the NCAA Constitution and Bylaws and Big Ten Handbook, including NCAA and Big Ten principles regarding institutional control, responsibility, ethical conduct and integrity...* (Emphasis added)

34. Had Coach Kaidanov failed to take the actions required of him by Penn State and the NCAA, pursuant to its own standards, codes of conduct, agreements, and policies, he would have been deemed in violation of the aforesaid requirements, and would have exposed himself to sanctions imposed upon him by the NCAA and Big Ten, as well as the risk of termination by the University. Retaliation by Penn State against a coach who upholds these standards is one of the express risks that the Code of Conduct is intended to insure against, and to which Penn State has expressly bound itself.

MEETING WITH DEL GIORNO - JULY 2013

35. After the single conversation in February of 2013, between Coach Kaidanov and the staff member who falsely accused Ms. Doe of drug possession, Coach Kaidanov continued to carry out his duties as head coach of the fencing team, including recruiting, running Penn

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State's Summer fencing camp, and preparing for the upcoming academic and athletic year. As previously noted, Coach Kaidanov's contract was renewed without comment or reservation on July 1, 2013.

36. In approximately March of 2013, Defendant Del Giorno introduced herself to Coach Kaidanov at the commencement of her employment as Athletics Integrity Officer, at which time Coach Kaidanov expressed his reservations regarding the Defendant's job title, and the potential for abuse implicit in such a position. Notwithstanding the concerns raised by Coach Kaidanov on that occasion, he did not at that time have reason to suspect that Defendant Del Giorno would ambush him and misuse her powers.

37. In or about July 2013, Defendant Del Giorno unexpectedly contacted Coach Kaidanov, to arrange a meeting. As there had been no occurrence that appeared to fall within the purview of Del Giorno, as Athletics Integrity Officer, Coach Kaidanov expressly asked Defendant Del Giorno about the purpose and subject matter of the meeting. Defendant Del Giorno expressly refused to provide Coach Kaidanov with this information.

38. At no time prior to this July meeting did Defendant Del Giorno, who upon information and belief was acting on behalf of or in conjunction with Defendant Joyner, inform Coach Kaidanov of the purpose or subject matter of the meeting. At no time prior to the Plaintiff's July meeting with Defendant Del Giorno did she, or any Defendant, inform Coach Kaidanov that a complaint of any kind had been made about him, the subject matter of such a complaint, the information or evidence in support of such a complaint, or any information at all. At no time was he informed of any failure to satisfy all requirements of his employment, as he had done for 31 years without issue. All such information, if there was any, was intentionally withheld to place the Plaintiff at a disadvantage going into his meeting with Del Giorno in July, 2013.

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39. At the July meeting with Defendant Del Giorgio, she inquired into the facts and circumstances of the matter involving Ms. Doe, informing the Plaintiff for the first time that the staff member had made the anonymous report regarding drug possession pursuant to Penn State's post-Sandusky anonymous reporting system. Nevertheless, Defendant Del Giorgio offered no information or evidence suggesting that Coach Kaidanov had violated any policy of the University, or any terms or provisions of any of the rules, codes of conduct or agreements to which Penn State was a party.

40. If Coach Kaidanov was under investigation for alleged violation of Penn State's policy regarding "retaliation", Defendant Del Giorgio purposefully withheld such information from Coach Kaidanov. Defendant Del Giorgio purposefully failed to advise Coach Kaidanov of any allegations against him which could lead to discipline, up to and including termination, and purposefully misled Coach Kaidanov to the false belief that there was "nothing to be concerned about", and that no event worthy of discipline had occurred.

41. During the July meeting, Defendant Del Giorgio gave no indication that this was an inquisition for the benefit of the University, withheld from the Plaintiff all materials relevant to the matters about which he was questioned, and gave no indication that the information discussed at that meeting would be used to support the potential, or planned, termination of the Plaintiff's employment, thereby preventing him from offering a meaningful response or rebuttal to any potential allegations against him.

42. No person who could be considered a supervisor of Coach Kaidanov was present at the first meeting with Defendant Del Giorgio. He was not informed by any of the Defendants that he had or was suspected of failing in any way to carry out his duties and obligations as head coach, or as a staff member of the University.

43. At the conclusion of the July meeting with Defendant Del Giorgio, Coach

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Kaidanov was not provided with any written documentation regarding the meeting, including but not limited to a signed written summary indicating the date of the meeting and the points covered in the discussion. He was not provided with documentation stating that he had failed to meet any expectation or standard of his employment. He was not informed, verbally or in writing, that there was a prior or ongoing failure of performance, which could result in dismissal, whether or not remedial standards were imposed or met. All of the foregoing failures by Defendant Del Giorno, and by the other all Defendants were expressly in violation of Penn State University's written policies and procedures, and further constituted a failure by the Defendants to uphold Coach Kaidanov's right to procedural due process.

44. At all times relevant hereto, Defendant Del Giorno, both in her official and individual capacities, whether acting alone or in conjunction with Defendant Joyner, acted so as to intentionally deprive the Plaintiff of his right to due process in matters directly affecting his employment. Defendant Del Giorno knew, and withheld from Plaintiff, the fact that their July meeting would be used as an evidentiary proceeding to the benefit of the Defendants, and did so contrary to the Plaintiff's expectation of his rights of due process and future employment, both contractually and as a matter of law.

TERMINATION BY JOYNER

45. In the weeks following the July meeting, Coach Kaidanov was contacted by the administrative assistant to Defendant Joyner, asking that Coach Kaidanov come to Joyner's office for a meeting on August 20, 2013. Once again, Defendants intentionally kept Coach Kaidanov unaware of the purpose of the meeting with Defendant Joyner. Prior to the scheduled meeting, Defendants had already conspired to terminate Coach Kaidanov, the meeting was merely to effect this termination on the pretext of a previously undisclosed and undocumented charge of "retaliation".

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46. At no time prior to the meeting with Defendant Joyner on August 20, 2013 had there been any further inquiry or investigation into the events that lead to the pre-textual termination of Coach Kaidanov, which he was was informed of, or in which he was allowed to participate.

47. At the meeting on August 20, 2013, which was also attended by Defendant Del Giorno, Defendant Joyner informed Coach Kaidanov that Joyner had "lost confidence" in Coach Kaidanov and advised Coach Kaidanov for the first time that he was accused of retaliating against the staff member with whom he had spoken to regarding her false report about Ms. Doe.

48. Defendant Joyner purportedly stated the reasons for Coach Kaidanov's dismissal --all of which are pretextual -- in his letter dated August 20, 2013, a copy of which is attached hereto as Exhibit "B". Defendant Joyner terminated Coach Kaidanov without just cause, without notice that his employment was in jeopardy, without an opportunity to meaningfully respond to the charges against him or to rebut the predetermined decision before it would take effect, and without complying with the policies and procedures to which the University was bound.

49. The allegations made by Defendant Joyner, based upon the false and improper statements and motivations of Defendant Del Giorno, and potentially by other employees, agents and servants of Penn State University, were false, contrary to all available evidence, and served as a pretext to wrongfully discharge Coach Kaidanov, despite his full and complete satisfaction of all duties imposed upon him, contractual and otherwise, for a period of 31 years.

THE GRIEVANCE PROCESS

50. Subsequent to Coach Kaidanov's wrongful discharge by Defendant Joyner, in

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conjunction with Defendant Del Giorno, while both were acting as agents of Defendant Penn State University, Defendant Penn State University staged a grievance hearing on September 27, 2013. This proceeding occurred before Dovizia Long, a manager of Employee Relations at Penn State and an employee of Defendant Penn State University. The alleged purpose of the grievance proceeding was to enable Ms. Long to hear evidence concerning the basis for Defendant Joyner's decision to wrongfully terminate Coach Kaidanov's employment, and to allow Coach Kaidanov to respond to the evidence against him. In reality, the grievance hearing served as a mere rubber-stamp approval of Defendants Joyner and Del Giorno's actions without ever providing Coach Kaidanov with any evidence of the alleged retaliation nor a meaningful opportunity to respond. Coach Kaidanov was precluded from presenting relevant rebuttal information including but not limited to statements of Coach Kaidanov's good name, character, integrity, and reputation to rebut Joyner's pre-textual claim he had a factual basis to lose confidence in Coach Kaidanov.

51. At the grievance hearing on September 27, 2013, Defendant Joyner's evidentiary presentation consisted entirely of reading the text of his letter dated August 20, 2013, setting forth the inadequate and specious grounds upon which Coach Kaidanov's termination was purportedly based. At no time did Defendant Joyner, or any other person present at the grievance hearing, factual, objective, specific, credible or corroborated evidence of wrongdoing of any kind by Coach Kaidanov, including that Coach Kaidanov had engaged in adverse employment action against any person, or that he had engaged in any conduct that was legally or factually considered retaliatory, as that term is established in the employment context. Tellingly, the staff member that Coach Kaidanov was accused of retaliating against was completely absent from every stage of the termination process. No statement or accusation was ever presented or attributed to her regarding the conversation she had with

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Coach Kaidanov or any events or occurrences after said conversation.

52. Defendant Joyner identified Policy AD67 of the Penn State Policy Manual, entitled "Disclosure of Wrongful Conduct and Protection From Retaliation", and falsely alleged that Coach Kaidanov had violated said policy. Said policy proscribes retaliation against persons who make good faith reports of suspected wrongful conduct, and defines "retaliation" as follows:

"Retaliation" means any *adverse action* taken by a member of the University faculty, staff, or student body against any individual on the basis of a **Good Faith Report** made by such individual, or on the basis of such individual's participation in an investigation, hearing, or inquiry by the University or an Appropriate Authority.... *Retaliation* shall include, but not be limited to, *harassment, discrimination, threats of physical harm, job termination, punitive work schedule or research assignments, decrease in pay or responsibilities, or negative impact on academic progress.* (Emphasis added)

53. Both as defined by AD67, and as determined at law, there is no evidence that Coach Kaidanov engaged in any activity that has previously been considered or determined to be retaliation. Indeed, as previously stated herein, Coach Kaidanov lacked the professional nexus to the staff member who falsely accused Ms. Doe of drug possession to make any of the indicia of retaliation possible.

54. As a further attempt at validating their wrongful termination of Coach Kaidanov, the Defendants offered unsupported, uncorroborated, contradictory and inconsistent subjective impressions that Coach Kaidanov might, at some future time, fail to adhere to University Policy AD67, which the Defendants failed to demonstrate had been violated prior to his discharge.

55. Coach Kaidanov had accepted, and at all times adhered to, his responsibility to follow AD67, notwithstanding that the policy failed to provide Penn State's students, coaches

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and staff with protection and safeguards against false and unsubstantiated anonymous reports of alleged misconduct, of the sort made against Ms. Doe. Despite his disagreement with the nature of the policy, Coach Kaidanov had explicitly stated, and was recorded as having stated, that he has followed said policy and would do so in the future as he was required to do.

56. At no time before or after Coach Kaidanov's wrongful termination did the Defendants offer evidence, or otherwise attempt to support, any presumptive determination that Coach Kaidanov had engaged in any act of misconduct, whether in violation of any University policy, codes of conduct, agreements, rules or laws. Said failure was in direct violation of University Policy HR78, pursuant to which it was incumbent upon Defendant Penn State University, by and through Defendants Joyner and Del Giorno and others, as its agents, to allege and demonstrate the occurrence of a "**major** act of misconduct" in order to justify bypassing the requirements of HR78 and order immediate dismissal of Coach Kaidanov.

57. The entirety of the evidence offered against Coach Kaidanov at the September 27, 2013 hearing was the subjective belief of Defendants Joyner and Del Giorno that at some prospective time in the future, Coach Kaidanov might not adhere to AD67. Said subjective beliefs were in direct contradiction to the express representations by Coach Kaidanov that AD67 would be adhered to should it ever apply. Though Defendant Del Giorno intentionally and falsely stated that Coach Kaidanov indicated he would not follow AD67, Robert Manny's -- the Senior Director of Employee Relations-- hand written notes confirm that Plaintiff never stated that he would not follow AD67 and that Defendant Del Giorno was mistaken.

58. Defendant Joyner admitted that he never even considered the NCAA bylaws or rules before terminating Coach Kaidanov, notwithstanding the affirmative duties imposed upon Coach Kaidanov by said provisions, as well as by the applicable agreements, codes of

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conduct, policy manuals and guidelines imposing affirmative duties and responsibilities upon Coach Kaidanov, with which he was complying at all times relevant hereto.

59. Defendants Joyner and Del Giorno wrongfully determined, in direct contradiction to the affirmative duties and responsibilities imposed upon Coach Kaidanov by the aforesaid directives, that he could satisfy his duties and responsibilities merely by receiving some “details” of the report involving Ms. Doe from a third party, without conducting the independent inquiry necessary to both to satisfy his affirmative duties and responsibilities, and protect himself against the risk of sanctions by the NCAA and termination for failing to do so.

60. Defendants Joyner and Del Giorno’s interpretation of Coach Kaidanov’s mandatory oversight and reporting requirements is erroneous and unfounded, and directly contradicts, among other rules, NCAA Bylaw 11.1.2.1, which further imposes upon head coaches the responsibility of his program’s compliance with NCAA rules, including but not limited to prohibitions on drug use and possession. The NCAA Drug Testing Program Protocol expressly bans marijuana or THC, the possession of which would impose upon Coach Kaidanov a non-delegable duty to investigate and report such an incident as a violation of NCAA rules. Bylaw 11.1.2.1 makes the failure of a head coach to affirmatively act a punishable offense. By terminating the employment of Coach Kaidanov for simply doing what the NCAA rules, legislation, and bylaws required of him, in fact, Penn State, Joyner and Del Giorno itself/themselves violated NCAA rules, legislation and bylaws.

61. The proceeding on September 27, 2013 was fundamentally unfair, and failed to provide Coach Kaidanov with even the most rudimentary trappings of due process. Coach Kaidanov was given no meaningful opportunity to hear and see the alleged evidence against him, whether before or at the hearing, was given no meaningful opportunity to rebut the

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unfounded and conclusory statements against him, and was not provided with an objective fact finder capable of challenging or overriding the opinions and fraudulent “findings” of Joyner, Del Giorno and Penn State University. In addition, in all material respects the Defendants directly violated all of the policies, codes of conduct, agreements, rules and protections previously identified herein, setting forth the protections to which Coach Kaidanov was contractually and otherwise entitled.

62. Ms. Long, the hearing officer on September 27, 2013, issued written conclusions on October 10, 2013, in which she adopted wholesale the erroneous, unfounded and subjective impressions of Defendants Joyner and Del Giorno, stating without independent support or objective sources that Coach Kaidanov could meet his obligations to the NCAA by simply having received a third-party report of an incident involving alleged drug possession and use by one of his student-athletes, notwithstanding the myriad bylaws, codes of conduct, agreements, policies and rules imposed upon Coach Kaidanov by Penn State University and the NCAA requiring his affirmative and direct participation in such matters, as to which head coaches, including the Plaintiff, have been given no alternative or discretion whatsoever. The October 10, 2013 correspondence of Dovizia Long and the November 22, 2013 correspondence of Susan M. Baso (Vice-President for Human Resources) are attached hereto, made a part hereof and collectively identified as Exhibit “C”.

63. Having imposed upon Coach Kaidanov clear and unequivocal conditions and requirements upon which the continuation of his employment was expressly based, over which Coach Kaidanov had no input, control or discretion, and Penn State University having expressly committed itself to the implementation of these requirements and the protection of coaches and staff members complying in good faith, the Defendants acted and conspired maliciously and in bad faith in wrongfully terminating Coach Kaidanov on the pretext of an

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alleged past or prospective violation of a policy with which Coach Kaidanov clearly complied. In and about the time Joyner terminated Plaintiff, the NCAA who monitored Penn State's compliance with the "post-Sandusky" Penn State and NCAA Agreement reduced the sanctions it levied against Penn State citing Penn State's commitment to the "post-Sandusky" Penn State and NCAA Agreement. compliance with University policy, as to which the University failed and refused to offer probative evidence, and as to which no due process was provided, the Defendants have themselves violated NCAA rules and bylaws, the AIA, the ICA Policy Manual, the Code of Conduct for Intercollegiate Athletics, Policy AD67, Policy HR78, Plaintiff's employment contract, the laws of the Commonwealth of Pennsylvania, and the laws of the United States of America, all without justification or excuse. It is unknown whether Defendants Penn State,

64. By wrongfully terminating Coach Kaidanov's employment for the false reason of his alleged non- Joyner or Del Giorno have self-reported itself/themselves to the NCAA for its wrongful termination of Coach Kaidanov in violation of NCAA rules, legislation and bylaws.

CAUSES OF ACTION

COUNT ONE

CONSTITUTIONAL AND CIVIL RIGHTS VIOLATIONS - 42 U.S.C. §§1983

Plaintiff v. Individual Defendants Joyner and Del Giorno Violation of Procedural Due Process Rights Failure to Provide Adequate Pre- and Post-Termination Procedure, Impairing Liberty Interest

65. The Plaintiff hereby adopts and incorporates by reference all preceding paragraphs, as if fully set forth herein.

66. Prior to commencing this action, the Plaintiff has exhausted all administrative remedies.

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67. At all times relevant hereto, Defendants Joyner and Del Giorno, as state actors and/or persons acting under color of state law, acted both in their official capacities, and individually, to deprive Plaintiff of his constitutional and civil rights.

68. At all times relevant hereto, Defendant Joyner had final decision making authority regarding the wrongful termination of Plaintiff's employment, and the conduct by which he was deprived of his constitutional and civil rights.

69. At all times relevant hereto, Defendant Del Giorno conspired with Defendant Joyner to effectuate the wrongful termination of Plaintiff's employment, and the conduct by which he was deprived of his constitutional and civil rights.

70. Defendants terminated Plaintiff's employment pre-textually, without affording the Plaintiff both constitutionally adequate pre-termination or post-termination procedural due process.

71. The actions of the Defendants were taken under color of state law.

72. As an employee during his contract term period, the Plaintiff had more than a unilateral expectation of continued employment, sufficient to trigger the constitutional requirement of adequate pre- and post-termination procedural due process.

73. The Defendants failed to provide Plaintiff with even minimal procedural due process, including but not limited to, failing to provide notice of the charges or allegations against him, failing to apprise him of the risk to his employment of the charges and allegations against him, intentionally withholding information from the Plaintiff, intentionally preventing him from meaningfully responding to the charges and allegations against him, not affording him an opportunity to appeal before the termination would take effect, and otherwise depriving him of the ability to meaningfully participate in a process in which his rights were to be finally determined. At all times relevant hereto Defendants prohibited Coach Kaidanov

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from reviewing documents referred to by Joyner, Del Giorno and Robert Manny (Senior Director, Employee Relations) during the proceedings.

74. The Defendants had no compelling interest in prematurely and wrongfully terminating Coach Kaidanov's present and future employment without providing him with adequate and proper pre-termination procedures, as Defendants had been aware of the alleged incident which became the pretext for their wrongful termination of Coach Kaidanov for approximately five months, during which time the Defendants made no effort to address any matter with Coach Kaidanov, and during which time the Defendants made no effort to limit or preclude him from carrying out his employment duties on campus, including recruiting student-athletes, interacting with staff, faculty and students, and otherwise representing favorably the image and reputation of Penn State University and its fencing program, including internationally.

75. The Defendants conspired at all times, acted intentionally and with malice toward the Plaintiff, or in the alternative acted with reckless disregard for the truth, and willfully devised and fabricated pre-textual reasons, explanations and claims upon which to falsely premise the Plaintiff's termination, when in fact the Plaintiff had engaged in no wrongdoing whatsoever.

76. The Defendants acted both individually and in concert in these efforts and have colluded to bring about the deprivation of the Plaintiff's constitutional and civil rights.

77. Defendants' express refusal to allow Coach Kaidanov to be represented by counsel at the grievance hearing on September 27, 2013 was fundamentally unfair and was not in accordance with University procedures. Defendants expressly prohibited Coach Kaidanov from being assisted by counsel despite his request for counsel and despite the Defendants knowledge that English is Coach Kaidanov's second language. This denial of counsel was itself

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a violation of the Coach Kaidanov's right to procedural due process and precluded the Plaintiff from a fair opportunity to rebut the unfounded allegations against him.

78. The Defendants' grievance proceedings were merely a display, and were conducted for the sole purpose of blessing the Defendants' actions with the illusion of validity and substance, while foregoing all indicia of procedural due process and any recognition of Plaintiff's constitutional and civil rights.

79. As a direct and proximate result of Defendants' Joyner and Del Giorno's conduct, committed in their official and individual capacities, and under color of state law, Coach Kaidanov suffered denial of procedural due process, denial of equal protection, denial of his property rights, and denial of his right to liberty in his person and property.

80. As a further direct and proximate result of the acts of the Defendants, Joyner and Del Giorno, Coach Kaidanov has suffered emotional distress, embarrassment, humiliation, damage to his reputation, damage to his earning capacity, loss of employment, loss of future employment opportunities, loss of liberty, loss of income and other financial losses, including attorneys fees, all to his detriment, loss and harm.

81. The Defendants' actions were intentional, willful, purposeful, malicious, and were undertaken with clear knowledge and foresight that the harm complained of by the Plaintiff would occur, and further with full knowledge that their actions would violate or impair the Plaintiff's constitutional, and civil rights.

COUNT II

CONSTITUTIONAL AND CIVIL RIGHTS VIOLATIONS - 42 U.S.C. §§1983

**Plaintiff v. Defendant Pennsylvania State University
Violation of Procedural Due Process Rights
Failure to Provide Adequate Pre- and Post-Termination Procedure,
Impairing Liberty Interest**

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82. The Plaintiff adopts and incorporates by reference all preceding paragraphs and allegations, as if fully set forth herein.

83. At all times relevant hereto, Defendants Joyner and Del Giorno were acting in the course and scope of their employment with Defendant Penn State University, and at all times were the agents, servants and employees of Defendant Penn State University. As such, Defendant Penn State University is vicariously liable for the wrongful actions of Defendants Joyner and Del Giorno, under doctrines including, but not limited to, agency, respondeat superior, master-servant, joint venture and contract.

84. The Defendant, Penn State University, through its agents and employees, acting in their official capacity and under color of state law, terminated Plaintiff pre-textually, without affording him constitutionally adequate pre- and post-termination procedural due process.

85. As an employee during his contract term period, the Plaintiff had more than a unilateral expectation of continued employment, sufficient to trigger the constitutional requirement of adequate pre- and post-termination procedural due process.

86. The Defendant failed to provide Plaintiff with even minimal procedural due process, including but not limited to, failing to provide notice of the charges or allegations against him, failing to apprise him of the risk to his employment of the charges and allegations against him, intentionally withholding information from the Plaintiff, intentionally preventing him from meaningfully responding to the charges and allegations against him, failing to provide a probationary period, failing to give the Plaintiff an opportunity to appeal before the termination would take effect, and otherwise depriving him of the ability to meaningfully participate in a process in which his rights were to be finally determined.

87. The Defendant had no compelling interest in prematurely and wrongfully

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terminating Coach Kaidanov's present and future employment without providing him with adequate and proper pre-termination procedures, as Defendant had been aware of the alleged incident(s) which became the pretext for their its wrongful termination of Coach Kaidanov for approximately five months, during which time the Defendant made no effort to address any matter with Coach Kaidanov, and during which time the Defendant made no effort to limit or preclude him from carrying out his employment duties on campus, including recruiting student-athletes, interacting with staff, faculty and students, and otherwise representing favorably the image and reputation of Penn State University and its fencing program, including internationally.

88. The Defendant at all times acted intentionally and with malice toward the Plaintiff by and through its agents and employees, or in the alternative acted with reckless disregard for the truth, and willfully devised and fabricated pre-textual reasons, explanations and claims upon which to falsely premise the Plaintiff's disciplinary firing, when in fact the Plaintiff had engaged in no wrongdoing whatsoever.

89. The Defendant, which acted both individually and jointly with the other Defendants in these efforts, has colluded to bring about the deprivation of the Plaintiff's constitutional and civil rights, and has engaged in acts of intimidation and retaliation against University personnel who have subsequently attempted to aid or support the Plaintiff's efforts to ascertain the truth of the reasons behind his discharge.

90. The Defendant's prohibition against the Plaintiff being assisted by counsel at the administrative proceedings by which the Defendant violated the Plaintiff's constitutional and civil rights was itself a violation of the Plaintiff's right to procedural due process.

91. The Defendant's grievance proceedings were merely a pretense, and were conducted for the sole purpose of endowing the Defendants' actions with the illusion of

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validity and substance, while foregoing all indicia of procedural due process and any recognition of Plaintiff's constitutional and civil rights.

92. As a direct and proximate result of Defendants' conduct, committed in their official and individual capacities, and under color of state law, Coach Kaidanov suffered denial of procedural due process, denial of equal protection, denial of his property rights, and denial of his right to liberty in his person and property.

93. As a further direct and proximate result of the acts of the Defendants, Coach Kaidanov has suffered emotional distress, embarrassment, humiliation, damage to his reputation, damage to his earning capacity, loss of employment, loss of future employment opportunities, loss of liberty, loss of income and other financial losses, including attorneys fees, all to his detriment, loss and harm.

94. The Defendant's actions were intentional, willful, purposeful, malicious, and were undertaken with clear knowledge and foresight that the harm complained of by the Plaintiff would occur, and further with full knowledge that its their actions would violate or impair the Plaintiff's constitutional and civil rights.

COUNT III

FEDERAL CIVIL RIGHTS VIOLATIONS - 42 U.S.C. §1983

Plaintiff v. All Defendants Stigma Plus, Violation of Plaintiff's Right to Due Process, Impairing Liberty Interest in Plaintiff's Reputation

95. The Plaintiff adopts and incorporates by reference all preceding paragraphs and allegations, as if fully set forth herein.

96. Defendant Penn State University, by and through its officers, officials, agents and employees, including but not limited to Defendants Joyner and Del Giorno, and Defendants Joyner and Del Giorno, in their official and individual capacities, while acting as

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state actors and under color of state law, created and disseminated false and defamatory impressions and statements about Plaintiff in connection with and concurrent with Plaintiff's constitutionally improper termination from employment without adequate pre- or post-termination procedural due process.

97. The aforesaid actions by Defendant Penn State University, by and through its officers, agents, employees and officials, including but not limited to Defendants Joyner and Del Giorno, in their official and individual capacities, while acting as state actors and under color of state law, have blackened Plaintiff's name and reputation, thus depriving the Plaintiff of his protected liberty interest in his reputation under the Fourteenth Amendment of the United States Constitution, without due process of law.

98. The false and defamatory impressions and statements created and disseminated by the Defendants about the Plaintiff in connection with the improper termination of his employment were false, misleading, and made with reckless disregard for the truth, and were made publicly and as part of the Plaintiff's permanent employment record.

99. Defendants, individually and in concert, and knowing that the Plaintiff had not violated any Penn State guideline, policy or regulation, or any law, summarily removed all references to Coach Kaidanov's long and formerly unblemished tenure from its public website at Penn State University without a factually accurate comment except to note that his removal involved a "personnel matter", inviting rampant and unfounded speculation in the post-Sandusky era that Coach Kaidanov had committed an egregious act or acts, which the Defendants knew was not the case.

100. To the present, despite having elected to publicly announce Coach Kaidanov's sudden and otherwise inexplicable discharge during an otherwise unblemished career, Penn State University, Joyner, Del Giorno and other employees of Penn State University have

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refused to publically and truthfully state why Coach Kaidanov was terminated and, instead, continue to mislead the public by stating that Coach Kaidanov was terminated, in essence, for a "personnel matter", falsely implying wrongdoing on his part. Similar statements were also made by representatives of Penn State, the Penn State athletics department, and members of the Penn State Board of Trustees.

101. The grievance hearing was recorded by the Defendants, and in an attempt to clear his name and reputation, Coach Kaidanov has repeatedly asked Penn State to release the recording of that proceeding to the public. Despite these requests, Penn State refuses to do so, and instead continues its pattern of refusal to accurately comment upon the facts of Coach Kaidanov's improper termination, with reckless disregard for the truth.

102. The Defendants well know that the improper termination of Coach Kaidanov was pre-textual, wrongful and without basis. Nevertheless, the Defendants have continued to expose Coach Kaidanov to public scorn, contempt, emotional damage, distress, humiliation, embarrassment, loss of his good name and reputation and other harms by implying that Coach Kaidanov committed an act worthy of his termination, and by refusing to accurately and truthfully provide the reasons for his wrongful termination.

103. Defendants have denied Plaintiff's request for any form of a name-clearing hearing that could clear his name. Because the Defendants' defamatory impressions, actions and statements were disseminated publicly, due process requires that any such name-clearing process also be public.

104. The improper termination of Coach Kaidanov, and the Defendants' statements regarding his firing, including but not limited to the placement of a pre-textual and inaccurate letter of termination based on false information in Coach Kaidanov's employment file, have irreparably harmed Coach Kaidanov's reputation for honesty and integrity, have irreparably

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harmed his ability to earn a living in his chosen profession, and occurred concurrent with and/or as a product of the deprivation of Coach Kaidanov's protected employment.

COUNT IV

STATE LAW CLAIM - TORTIOUS INTERFERENCE WITH CONTRACT
ABSENT PRIVILEGE OR JUSTIFICATION

Plaintiff v. Defendants Joyner and Del Giorgio

105. The Plaintiff adopts and incorporates by reference all preceding paragraphs and allegations, as if fully set forth herein.

106. At all times relevant hereto, the Plaintiff enjoyed a contractual relationship between himself and Defendant Penn State University.

107. At all times relevant hereto, Defendants Joyner and Del Giorgio, by their intentional, malicious and/or reckless acts and/or omissions, conspired and acted with the intention of causing the Plaintiff to be falsely and wrongfully terminated from his employment, notwithstanding their actual knowledge that the Plaintiff had not engaged in improper or wrongful conduct, and notwithstanding their knowledge that the basis and justifications offered in support of their accusations and actions against the Plaintiff were false.

108. At no time was there a privilege or justification available to Defendants Joyner or Del Giorgio to act with malice, with reckless disregard for the truth, and/or with the intent to falsely cause the Plaintiff to be wrongfully terminated from his employment, in violation of his constitutional rights, federal law, state law, contractual rights, and all other applicable standards and protections.

109. At all times relevant hereto, Defendants Joyner and Del Giorgio acted with malicious and/or reckless disregard for the fact that the Plaintiff had a contract with

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Defendant Penn State University, that he was entitled to the good faith execution of that contract by Penn State University and its agents, servants and employees, and that he enjoyed constitutional and other protected rights and benefits in said employment, and its continuation.

110. The acts and/or omissions of Defendants Joyner and Del Giorno had no purpose other than the wrongful interference in and termination of the Plaintiff's contractual relationship with Defendant Penn State University, which the said Defendants Joyner and Del Giorno achieved on the basis of false pretense and pre-textual and malicious and/or reckless acts taken against the Plaintiff, and misrepresented to Penn State University, or otherwise adopted and ratified by Penn State University, resulting in the Plaintiff's loss of contractual employment.

111. As a direct and proximate result of the tortious interference by Defendants Joyner and Del Giorno with Plaintiff's contractual relationship, the Plaintiff was caused to suffer the premature termination of his contract, loss of future contractual employment with Penn State University, loss of income, loss of earning capacity, emotional distress, embarrassment, humiliation, damage to his reputation, loss of liberty and other economic and non-economic harm, all to his detriment, loss and harm.

COUNT V

STATE LAW CLAIM - WRONGFUL TERMINATION

Plaintiff v. All Defendants

112. The Plaintiff adopts and incorporates by reference all preceding paragraphs and allegations, as if fully set forth herein.

113. At all times relevant hereto, Defendant Penn State University imposed upon Coach Kaidanov numerous affirmative duties and responsibilities regarding the safeguarding

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and protection of student-athletes, as well as investigating, enforcing and reporting any violations or suspected violations of matters of integrity within the men's and women's fencing teams, and the athletics department in general.

114. At the same time, Defendant Penn State University adopted and bound itself to certain protections, assurances and safeguards to those coaches and staff who acted in good faith in the performance of the several duties and responsibilities imposed upon them as conditions of employment by the University. In addition, coaches and staff, including the Plaintiff, were otherwise entitled to certain protections and safeguards provided by the University's policies and procedures for the benefit of its coaches, staff and employees, as well as those protections provided by law. At all times relevant hereto, the Plaintiff had a reasonable expectation of the Defendants' good faith adherence to those policies and procedures.

115. Notwithstanding that Coach Kaidanov acted at all times in compliance with his contract with Defendant Penn State University, and was at all times compliant with the numerous affirmative duties and responsibilities imposed upon him as conditions of his employment, the Defendants, individually and jointly, engaged in false, fraudulent and malicious and/or reckless conduct to deprive the Plaintiff of his employment and reputation, as well as conduct in violation of the Plaintiff's constitutionally protected rights and the laws and public policies of the Commonwealth of Pennsylvania.

116. Defendants intentionally failed to abide by their contract with the Plaintiff, as well as the several agreements, codes of conduct, policy manuals, handbooks, University policies, rules, standards and procedures that established the affirmative duties and responsibilities of all parties to this action, and wrongfully terminated the Plaintiff without just cause, in violation of his contract, and in contravention of the policies, procedures and

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protections to which the Plaintiff was entitled, contractually and otherwise.

117. Notwithstanding the Defendants' duty to act in good faith, and in compliance with the Plaintiff's contract and those agreements, codes of conduct, policy manuals, handbooks, University policies, rules, standards and procedures to which the Plaintiff had a reasonable expectation of compliance by the Defendants, the Defendants failed to act in good faith and intentionally, willfully and/or in reckless disregard of the truth, caused the Plaintiff to be wrongfully terminated from his employment.

118. Among other false pretense and pre-textual reasons provided by Defendants to justify Plaintiff's wrongful termination was the false and unfounded allegation that the Plaintiff had violated Penn State Administrative Policy AD67, for which allegation there is no good faith factual support or evidence, and which at all times relevant hereto served as a false basis for an otherwise improper termination carried out by the Defendants.

119. Similarly, among other false pretense and pre-textual reasons provided by Defendants to justify Plaintiff's wrongful termination was the false and unfounded allegation that the Plaintiff might, at some future time, fail to abide by Policy AD67, even if he had not done so prior to his wrongful termination. At all times relevant hereto, Coach Kaidanov had unequivocally stated acceptance and understanding of his obligation to adhere to all Penn State policies, explicitly including AD67.

120. The acts and omissions of the Defendants, individually and severally, in constructing and relying upon a false pretext for the wrongful termination of the Plaintiff, constitute actual fraud.

121. The acts and omissions of the Defendants, individually and severally, in constructing and relying upon a false pre-text for the wrongful termination of the Plaintiff, constitute actual malice.

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122. Defendant Penn State University is liable for the acts and/or omissions of Defendants Joyner and Del Giorgio as alleged herein, as well as the acts or omissions of its other employees as alleged herein, under the doctrines of agency, vicarious liability, master-servant, respondeat superior, joint venture and contract.

123. As a direct and proximate result of the aforesaid acts of the Defendants, the Plaintiff has suffered loss of his employment, loss of employment opportunities, loss of income, loss of earning capacity, emotional distress, embarrassment, humiliation, damage to his reputation, loss of liberty and other economic and non-economic harm, all to his detriment, loss and harm.

COUNT VI

STATE LAW CLAIM - BREACH OF CONTRACT

Plaintiff v. All Defendants

124. The Plaintiff adopts and incorporates by reference all preceding paragraphs and allegations, as if fully set forth herein.

125. Plaintiff's employment contract term was renewed on July 1, 2013.

126. Plaintiff's contract had been renewed annually over a period of 31 years, and absent the wrongful conduct engaged in by the Defendants as described herein, the Plaintiff reasonably relied upon and had an expectation of the continued renewal of his contract while he continued to abide by and comply with the terms of said contract.

127. Despite Plaintiff's good faith compliance with the terms, conditions and requirements of his employment, Defendant Penn State University, by and through Defendants Joyner and Del Giorgio, in their official and individual capacities, and as the agents, servants and employees of Defendant Penn State University, knowingly and intentionally breached the contract between Penn State and the Plaintiff, as previously set

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forth herein by falsely and wrongfully terminating the Plaintiff on August 20, 2013 without just cause and during his contract term.

128. The Defendants' stated reasons for wrongfully terminating Plaintiff and breaching his contract were false and pretextual.

129. The acts and omissions of the individual Defendants constitute fraud.

130. The acts and omissions of the individual Defendants constitute actual malice.

131. As a direct and proximate result of the acts of the Defendants, individually, in concert, and as carried out pursuant to agency and employment, the Plaintiff suffered the premature termination of his contract, loss of future contractual employment with Penn State University, loss of income, loss of earning capacity, emotional distress, embarrassment, humiliation, damage to his reputation, loss of liberty and other economic and non-economic harm, all to his detriment, loss and harm.

COUNT VII

STATE LAW CLAIM – FALSE LIGHT

Plaintiff v. All Defendants

132. The Plaintiff adopts and incorporates by reference all preceding paragraphs and allegations, as if fully set forth herein.

133. At no time material hereto was Plaintiff considered a public figure as defined by relevant state law.

134. Defendant Penn State University, by and through its officers, officials, agents and employees, including but not limited to Defendants Joyner and Del Giorno, and members of the Board of Trustees in their official and individual capacities, created and disseminated false and defamatory impressions and statements about Plaintiff in connection with and concurrent with Plaintiff's wrongful termination.

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135. The aforesaid actions by Defendant Penn State University, by and through its officers, agents, employees and officials, including but not limited to Defendants Joyner and Del Giorno, and members of the Board of Trustees in their official and individual capacities have painted Plaintiff in a false light and blackened Plaintiff's name and reputation. The false light that these Defendants put the Plaintiff in is of a kind that would be highly offensive to a reasonable person.

136. The false and defamatory impressions and statements created and publicly disseminated by the Defendants about the Plaintiff were misleading, and made with reckless disregard for the truth.

137. Defendants, individually and in concert, and knowing that the Plaintiff had not violated any Penn State guideline, policy or regulation, or any law, summarily removed all references to Coach Kaidanov's long and formerly unblemished tenure from its public website at Penn State University without a factually accurate comment except to note that his removal involved a "personnel matter", painting him in a false light and inviting rampant and unfounded speculation in the post-Sandusky era that Coach Kaidanov had committed an egregious act or acts -- which the Defendants knew was not the case -- such that serious offense could reasonably be expected to be taken by a reasonable person in the Plaintiff's position.

138. To the present, despite having elected to publicly announce Coach Kaidanov's sudden and otherwise inexplicable discharge during an otherwise unblemished career, Penn State University, Joyner, Del Giorno and other employees of Penn State University have refused to publically and truthfully state why Coach Kaidanov was terminated and, instead, continue to mislead the public by stating that Coach Kaidanov was terminated, in essence, for a "personnel matter", falsely implying wrongdoing on his part. Similar statements were also

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made by representatives of Penn State, the Penn State athletics department, and members of the Penn State Board of Trustees.

139. The Defendants well know that the improper termination of Coach Kaidanov was pre-textual, wrongful and without basis. Nevertheless, the Defendants have maliciously continued to expose Coach Kaidanov to public scorn, contempt, emotional damage, distress, humiliation, embarrassment, loss of his good name and reputation and other harms by implying that Coach Kaidanov committed an act worthy of his termination, and by refusing to accurately and truthfully provide the reasons for his wrongful termination, clearly placing him in a false position before the public.

140. As a direct and proximate result of the Defendants' deliberate, malicious, reckless, and/or negligent misconduct set forth at length above, Plaintiff has suffered mental anguish, shame, humiliation, and public scorn. Further, the false light in which the Plaintiff has been placed would be highly offensive to any reasonable person.

WHEREFORE, Plaintiff requests the following relief:

- a. That this Honorable Court reinstate Plaintiff to his former employment with Defendant Pennsylvania State University;
- b. Compensatory damages as to all Defendants, including back pay and front pay;
- c. Punitive damages against all Defendants;
- d. Reasonable attorney's fees and costs as to all Defendants;
- e. Further relief as may be appropriate.

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